

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Richmond Division

MCCAIN-PALIN, 2008, INC.

Plaintiffs,

v.

Case No. 3:08cv709

JEAN CUNNINGHAM, *et al.*,

Defendants.

ANSWER

The defendants, Jean Cunningham, Nancy Rodrigues, and Harold Pyon (the “Defendants”), in their official capacity, by counsel, for their answer to the plaintiffs’ Complaint, say as follows to the numbered allegations thereof.

1. This is a statement of law that is neither admitted nor denied. If deemed to allege facts, they are denied.
2. Denied.
3. This is a statement of law that is neither admitted nor denied. If deemed to allege facts, they are denied.
4. This is a statement of law that is neither admitted nor denied. If deemed to allege facts, they are denied.
5. First and last sentences admitted. Unknown whether the remaining allegations are true or false, and they are therefore denied.
6. The duties of the Virginia Board of Elections are set forth by Virginia law.
7. The Virginia Code speaks for itself.

8. The Uniform and Overseas Citizens Absentee Voting Act of 1986 (“UOCAVA”) speaks for itself.
9. The Virginia Code speaks for itself.
10. Admitted.
- 11-13. Admitted.
14. The relationship between the State Board of Elections and local electoral boards is prescribed by Virginia law, which speaks for itself.
15. UOCAVA speaks for itself, as does the House Report quoted. Denied that any language not contained in UOCAVA is enforceable against the Defendants.
16. UOCAVA speaks for itself.
17. Denied. The House Report is not a statute.
18. Denied.
19. Denied.
20. The report speaks for itself.
21. The report speaks for itself.
22. The report speaks for itself.
23. The letter speaks for itself.
24. This is speculation which is neither admitted nor denied. If deemed to allege facts, they are denied.
25. The Virginia Code speaks for itself. Last sentence denied.
26. The guidelines speak for themselves. Denied that they create enforceable rights.
27. Admitted.

28. Admitted.
 29. Denied.
 30. Unknown and therefore denied.
 31. Upon information and belief, admitted, although it is not known how many jurisdictions were involved.
 32. Unknown, and therefore denied.
 33. Unknown, and therefore denied.
 34. The affidavit speaks for itself.
 35. Unknown, and therefore denied.
 36. Unknown, and therefore denied.
 37. Unknown, and therefore denied.
 38. Denied.
 39. All requests for relief should be denied.
 40. Any allegation not specifically admitted is denied.
 41. Denied that the plaintiffs are entitled to any relief against the Defendants, or to any relief against anyone.
 42. Denied that the Defendants have done anything in violation of the plaintiffs' rights.
- For their affirmative defenses to the Complaint, the Defendants say as follows:
43. The Complaint fails to state a cause of action.
 44. UOCAVA does not create a federal right to have absentee ballots mailed at least 45 days before an election.

45. Neither the USEAC report nor the DOJ letter creates federal rights enforceable against the Defendants under 42 U.S.C. § 1983.

46. UOCAVA does not create a private right of action in the plaintiffs; accordingly, the plaintiffs lack standing to bring this action.

47. This case is moot.

WHEREFORE, the Court should dismiss the case, with prejudice, and award the Defendants their attorney's fees and costs, and such other relief as the Court may deem appropriate.

JEAN CUNNINGHAM, *et al.*

By /s/
Counsel

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Certificate of Service

I certify that on November 6, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to counsel of record.

By: /s/
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